



United States Environmental Protection Agency
Office of Water, Office of Wastewater Management
Water Permits Division
September 2010



**National Pollutant Discharge Elimination System (NPDES)
Information Collection Rulemaking and CAFOs**

Background – CAFOs and the NPDES Program

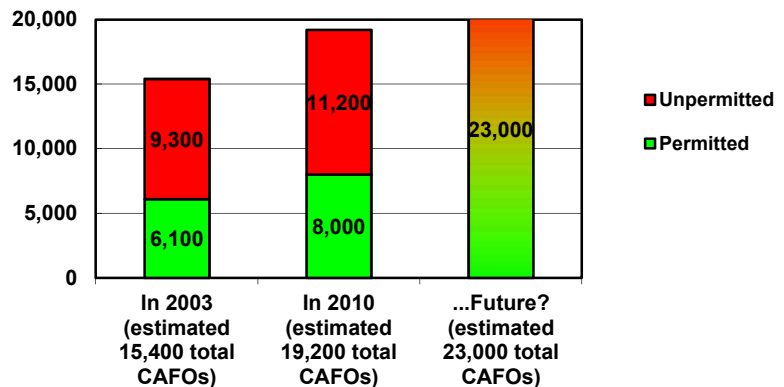
In 2008, EPA revised the NPDES permit regulations for concentrated animal feeding operations (CAFOs) to address the decision of the U.S. Court of Appeals for the Second Circuit in *Waterkeeper Alliance v. EPA*. Among other things, the 2008 final rule addressed the court's ruling by specifying that a CAFO that "discharges or proposes to discharge" must seek NPDES permit coverage. The rulemaking also clarifies that a CAFO "proposes to discharge" if an objective assessment determines that the CAFO is designed, constructed, operated, or maintained such that a discharge will occur. (73 FR 70424).

In May 2010, EPA released *Implementation Guidance on CAFO Regulations – CAFOs That Discharge or Are Proposing to Discharge*, which provides CAFO owners and operators and NPDES permitting authorities guidance for evaluating whether a CAFO discharges or proposes to discharge (EPA-833-R-10-006).

NPDES CAFO Program Implementation Status

EPA is moving forward vigorously to ensure that all CAFOs that need NPDES permits have them. Specifically, EPA Headquarters and the ten EPA Regional offices are working with all NPDES-authorized States to revise existing NPDES CAFO programs as expeditiously as possible and issue NPDES permits to those CAFOs that need them.

To date, approximately 40 percent of the estimated 19,200 CAFOs nationally have NPDES permits. However, it is unclear how many CAFOs in the U.S. "discharge or propose to discharge" and therefore could ultimately need NPDES permits. For the 2008 rule, EPA estimated that as many as 75 percent of all CAFOs could experience discharges based on standard operational profiles for CAFOs in the major animal sectors.



Upcoming NPDES Rulemaking to Require CAFOs to Report Facility Information

EPA is undertaking a national rulemaking to collect basic facility information from all CAFOs. The information collected will assist EPA and State permitting authorities in ensuring full implementation of the NPDES CAFO program and directing appropriate permitting, compliance assistance, and enforcement activities. EPA agreed to initiate the rulemaking in its settlement agreement with environmental petitioners arising out of litigation on the 2008 NPDES CAFO regulations. In the agreement, EPA and environmental petitioners agreed to the following terms:

- EPA would issue Duty-to-Apply guidance by May 2010 that provides more information on determining which CAFOs need NPDES permits.
- EPA would propose a rule to require all CAFOs to report basic facility information to the Agency, including but not limited to the following:
 - Name and address of the owner and operator
 - If contract operation, name and address of the integrator
 - Location (longitude and latitude) of the operation
 - Type of facility
 - Number and type(s) of animals
 - Type and capacity of manure storage
 - Quantity of manure, process wastewater and litter generated annually by the CAFO
 - Whether the CAFO land-applies
 - Available acreage for land application
 - If the CAFO land-applies, whether it implements a nutrient management plan for land application
 - If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 C.F.R. § 122.23(e)
 - If the CAFO does not land apply, alternative uses of manure, litter, and/or wastewater
 - Whether the CAFO transfers manure off-site, and if so, quantity transferred to recipient(s) of transferred manure
 - Whether the CAFO has applied for an NPDES permit
- EPA would propose the new information collection rulemaking by May 2011 and finalize the rulemaking by May 2012.

The new rulemaking will be promulgated under §308 information collection authorities of the Clean Water Act. Smaller animal feeding operations that are not CAFOs are not covered under the information collection rulemaking.

At present, EPA is in the pre-proposal stage of the rulemaking. The rulemaking process can be followed on EPA's Rulemaking Gateway at <http://yosemite.epa.gov/opei/RuleGate.nsf/byRIN/2040-AF22?opendocument>.